

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MAJOR SAVER HOLDINGS, INC.

v.

APPELLANT-RESPONDENT,

EDUCATION FUNDING GROUP, LLC, D/B/A MAJOR SAVER

RESPONDENT-APPELLANT.

DOCKET NUMBER WD73447 cons/WD73493

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 18, 2011

Appeal From:

Jackson County Circuit Court
The Honorable Jack Richard Grate, Jr., Judge

Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Anthony Landery Gosserand, Kansas City, MO, for **appellant-respondent**.

Jeanette Gaddie and Troy Douglas Renkemeyer, Overland Park, KS, for **respondent-appellant**.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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APPELLANT-RESPONDENT,

v.

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RESPONDENT-APPELLANT.

No. WD73447 cons/WD73493

Jackson County

Before Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Major Saver Holdings, Inc., and Education Funding Group, L.L.C., are competitors engaged in the business of assisting school districts with fundraising campaigns. Major Hammett, II, a former owner of Major Saver, left Major Saver and went to work for Education Funding. In October 2008, Major Saver and Education Funding entered into a settlement agreement as part of a mediated end to a dispute related to Hammett's departure from Major Saver. The agreement prohibited Education Funding from "soliciting" the business of certain school districts (one of which was the Republic School District), which meant that it would "not directly or indirectly initiate contact" with any individual who would decide whether to contract with either company for fundraising (*i.e.*, a "decision maker").

Major Saver had managed Republic's fundraising campaigns since 2004. Hammett had assisted through 2007, but was not involved in the 2008 campaign. In early 2009, Tracy Hankins, an elementary principal at Republic, approached Hammett at a conference and complained that their 2008 fundraising numbers were down. Hammett said he was no longer with Major Saver. Hankins asked Hammett what he could do to get the numbers back up. He said any assistance would have to be through his new company, Education Funding.

Hankins later telephoned Stan Coggin, President of the Republic Community Foundation (the organization responsible for Republic's fundraising), and told him about her conversation with Hammett. She suggested that they meet with Hammett. Coggin agreed and asked Hankins to have Hammett call him to finalize the arrangements. When Hankins next saw Hammett, she gave him Coggin's telephone number and relayed Coggin's request that Hammett call. The three met for lunch and discussed the upcoming 2009 fundraising campaign. Shortly thereafter, Coggin asked the Foundation Board if it would permit Hammett to make a presentation. The Board agreed, and Hammett made a presentation at the next Board meeting. The Board voted to hire Education Funding to handle the 2009 fundraising campaign. Coggin sent a letter to Major

Saver stating that Republic would not be hiring Major Saver for the 2009 campaign. Major Saver believed it had already been engaged to handle the 2009 campaign.

Major Saver filed a petition for breach of contract against Education Funding, alleging that Education Funding violated the non-solicitation clause of the settlement agreement by Hammett's direct and indirect solicitation of Republic's business via his contacts with Hankins and Coggin. Following a bench trial, at which Hankins' and Coggin's testimony was submitted via deposition and Hammett testified live, the trial court ruled in favor of Education Funding (finding that it had not breached the contract by soliciting the Republic School District either directly or indirectly) and awarded Education Funding \$10,000 in attorneys' fees, pursuant to the settlement agreement.

AFFIRMED; REMANDED IN PART.

Division Three holds: Major Saver's Appeal: (1) The evidence presented at trial supports the trial court's determination that Education Funding did not initiate direct or indirect solicitation in violation of the settlement agreement, in that the evidence showed that Hankins and Coggin "initiated the contact" with Hammett and Education Funding and, thus, they (and, ultimately, the Foundation) were the "solicitors." (2) The trial court did not err in finding that Hankins was acting as Coggin's agent based on the testimony that Coggin requested Hankins to have Hammett call him, and, in any event, this would not warrant reversal, because the finding was immaterial to the court's decision. (3) The trial court did not err in finding that Coggin was a "decision maker," and even if it had, that would not warrant reversal. The evidence showed that Hankins initiated the contact with Hammett and, in any event, whether Coggin was a decision maker was not critical to the trial court's decision.

Education Funding's Appeal: (1) The trial court acted within its discretion in awarding Education Funding \$10,000 in attorneys' fees as a "reasonable" amount, even though it admitted a fee statement for \$23,190.90 and found that "Defendant's attorneys' fees are reasonable." (2) Education Funding's request for damages for Major Saver's "frivolous" appeal is denied. The appeal is not "frivolous." Major Saver presumably honestly believed the contract had been breached and that it had grounds for appeal. (3) Education Funding, as the prevailing party on appeal, is entitled under the contract to reasonable appellate attorneys' fees. The trial court is best equipped to hear evidence and argument and determine the reasonableness of the fees.

The judgment is affirmed in all respects; the request for damages for frivolous appeal is denied; the cause is remanded for the trial court to determine the reasonable amount of appellate attorneys' fees to award Education Funding.

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